



DEPARTMENT OF ENERGY

PRINCETON SITE OFFICE

BUSINESS MANAGEMENT
PROCEDURE

PROCEDURE 1-6

GUIDELINES FOR PROCESSING CONTRACTOR
PROCUREMENT ACTIONS REQUIRING DOE APPROVAL

REVISION 3

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Date Issued: MAY 2006

ANNUAL REVIEW	
<u>Reviewer</u>	<u>Date</u>
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GUIDELINES FOR PROCESSING CONTRACTOR PROCUREMENT ACTIONS REQUIRING DOE APPROVAL

1.0 PURPOSE

The purpose of this procedure is to aid the Princeton Site Office (PSO) staff in their review of Princeton Plasma Physics Laboratory (PPPL) proposed procurement actions. Their review will result in their recommendation to the Contracting Officer (CO) to approve or disapprove the PPPL proposed subcontract action. DEAR 970.4402-2, Contractor Purchasing System (applicable to M&O's), requires CO approval. Those actions requiring PSO CO approval are identified in Enclosure 1.

2.0 SCOPE

This procedure assigns responsibilities to PSO personnel from the point of receipt of PPPL proposed subcontract actions to the resulting approval or disapproval by the Contracting Officer.

3.0 RESPONSIBILITIES AND AUTHORITIES

Although basic responsibility rests with the prime contractor for decisions concerning selection of subcontractors, subcontract prices and subcontract performance, in some procurement situations, it is necessary to include certain controls by the Government over subcontracting.

In general, consent is not required if the contractor's purchasing system has been approved in writing and the subcontract action is within the limitations identified in Enclosure 1.

The designated PSO employee should obtain from PPPL whatever information is required to determine the necessity for subcontracting and ensure proper consideration is given to the requirements of FAR 44.202-2. These considerations include acceptance of the technical capabilities of the prospective subcontractor, reasonableness of the costs, appropriate use of subcontract terms, type of subcontract, scope of the solicitation and acceptable evaluation criteria for award. In addition, if the proposed subcontract is (1) a cost-reimbursement, time and

materials, or labor-hour subcontract; (2) fixed price type subcontracts which exceed \$25,000; or (3) is one of a number of subcontracts, under the contract, with a single subcontractor for the same or related supplies or services which, in the aggregate, are expected to exceed one hundred thousand dollars (\$100,000), the advance notification required above needs to include the information contained in FAR 52.244-2).

4.0 PROCEDURE

4.1 Subcontract Review.

The designated PSO personnel should seek advice and assistance as necessary to fulfill their responsibilities and consider the following factors in their review of subcontracts submitted for Contracting Officer consent/approval:

- a. the technical justification for selection of the particular supplies, equipment or services;
- b. whether the proposed subcontract will require the use of Government-furnished facilities, and if so, whether proper consideration has been obtained;
- c. the responsibility of the proposed subcontractor; determinations concerning prospective subcontractor's responsibility is generally considered a function to be performed by the prime contractor. PG staff, in reviewing proposed subcontracts, is expected to make use of all available sources of information to satisfying her/himself that proposed sub-contractors are responsible. Knowledge of previous unsatisfactory performance by a proposed subcontractor or evidence of questionable financial capability may be sufficient reason to withhold consent, at least until the feasibility to employing alternate sources can be explored. An impending strike at the plant of the proposed subcontractor may also be cause for holding up consent pending a decision on availability of another responsible source.

PSO staff is also responsible for determining if the proposed subcontractor is listed on the GSA Lists of Parties Excluded from Federal Procurement or Non-procurement Programs (previously titled GSA Consolidated Lists of Debarred, Ineligible and Suspended Contractors).

When a listed firm is proposed as a subcontractor, the designated PSO employee shall not recommend consent to the subcontract with such subcontractor unless the CO and acquiring agency's head or designee

(Director of Procurement) states in writing the compelling reasons for this approval action (See FAR 9.405-2);

- d. the basis for selecting the proposed contractor, including the price competition obtained; in review of subcontracting, there should be assurance that the contractors obtain competition, if available, from qualified sources in their award of subcontracts to the extent consistent with the procurement of the required services or supplies;
- e. any cost or price analysis accomplished, with particular attention to whether cost or pricing data are accurate, complete and current, and whether any required certification has been obtained; the reasonableness of the subcontract price is determined by the presence of adequate price competition among potential subcontractors or by price and cost analysis. Although an apparently unreasonable price may not be sufficient reason for the flat refusal to consent to a proposed subcontract, it may cause the designated PSO employee to recommend to the CO to question the contractor's basis for acceptance. Contractors are required to undertake price analysis in all significant subcontract transactions (other than firm fixed price competitive), and to undertake cost analysis when certified subcontract cost or pricing data are required. Where the contracting officer's consent to subcontract is required, price or cost analysis shall be required as a condition of such consent and the policies and procedures set forth in FAR 15.402 shall be used to evaluate the subcontract price.

Under those conditions where subcontractor cost or pricing data and certification are required, consent to the proposed subcontract should not be recommended by the contract specialist or granted by the contracting officer unless the required data and the Certificate of Current Cost or Pricing Data is obtained in the prescribed format;

- f. flow down of all clauses required by law and the prime contract; Subcontracts should contain all clauses required by law and the prime contract, e.g., Small Business and Labor Surplus Area programs, Equal Employment Opportunity Program Act, Davis-Bacon Act, and other labor laws and regulations. They should also contain any clauses needed to carry out the requirements of the prime contract, even though there is no

specific "flow down" provision in the prime contract. For example, the contract should require that subcontracts provide that title to special test equipment and capital items, fully paid for under the subcontract and remaining in the possession of the subcontractors will pass to the Government whenever the prime contract provides for the vesting of such title in the Government. Failure of the subcontract to contain such requirements would be a basis for refusal to consent. Failure to include subcontract provisions for adequate protection and care of Government property that will come into the proposed subcontractor's control would justify withholding consent until proper provisions are included:

- g. the effectiveness of subcontract management by the prime contractor;
- h. the appropriateness of the type of subcontract to include whether and to what extent considerations have been given to provisions for economic price adjustment;
- i. the estimated total extent of subcontracting, including procurement of parts and materials;
- j. the extent to which the prime contractor obtains assurance of the adequacy of the subcontractor's procurement system;
- k. availability from Government sources of special test equipment;
- l. whether consideration was given to the solicitation of small business and labor surplus area subcontract sources;
- m. the extent of compliance with Cost Accounting Standards in the awarding of subcontracts;
- n. whether the prime contractor has adequately and reasonably translated the Government's technical requirements in the prime contract;
- o. whether the acquisition approach is in keeping with the risks involved and current policy;
- p. prime contractor's assessment and disposition of subcontractors alternate proposals, if offered; and

- q. the PPPL Procurement Policies and Procedures as approved by the CO have been followed.

In reviewing subcontracts, careful and thorough evaluation is particularly necessary when:

1. the prime contractor's procurement system or performance there under is considered inadequate;
2. subcontracts are for items for which there is no competition or for which the proposed prices appear unreasonable;
3. close working arrangements or business or ownership affiliations exist between the prime and the subcontractor, which may preclude the free use of competition or result in higher subcontract prices than might otherwise be obtained;
4. a subcontract is being proposed at a price less favorable than that which has been given by the subcontractor to the Government, all other factors such as manufacturing period and quantity being comparable; or
5. a subcontract is to be placed on a cost-reimbursement, time and materials, labor-hour, fixed-price incentive, or fixed-price redeterminable basis.

In consenting to cost-reimbursement subcontracts, the contracting officer must insure that fees under such subcontracts never exceed the fees identified in FAR 15.404-4(c)(4)(i) Subcontracts providing for payment on a cost-plus percentage of cost basis shall not be consented to under any circumstances.

4.2 Other Subcontract Review Requirements.

a. DOE Staff Review

Primary responsibility for the review of subcontracts resides with the assigned PSO employee. Certain subcontract actions require specific staff review indicated by an asterisk. Contracting Officer's (CO) comments shall be furnished to the appropriate staff offices as necessary.

<u>Division</u>	<u>Construction</u>	<u>A-E</u>	<u>NSTX</u>	<u>TFTR</u>
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PEM	*	*	*	*
ES&H	All actions where the CO and/or designated PSO employee has concerns regarding environmental, safety, health or nuclear issues.			

1. OCC All changes to pre-approved general provisions.
2. IPC All changes to pre-approved general provisions patent and intellectual clauses.
3. CHIRP All subcontract actions in excess of \$10M.
4. HQBCD All subcontract actions in excess of \$25M.

b. Independent Review Board (CHIRP)

In accordance with CH Directive 971 normal CH staff review constitutes requisite independent review for subcontract actions.

c. Headquarters Review and Approval

All subcontracts meeting the criteria specified in DEAR 971 requiring Headquarters Business Clearance Division (HQBCD) review and approval shall first be submitted for staff review and to the Independent Review Board.

4.3 Contracting Officer Consent/Approval to Subcontract.

In order that the contracting officer's consent to a proposed subcontract will not be misunderstood or given a meaning not intended, contractors should be furnished written notice essentially as contained in the CO Consent to Subcontract Letter format attached (Enclosure 2).

4.4 Failure to Consent/Approval to Subcontract.

If, as a result of the review, the designated PSO employee determines that the proposed subcontract action is unacceptable to the Government, that

notify the prime contractor of the reasons for withholding consent. Other arrangements must then be made for the proposed work. This may involve altering some of the terms of the subcontract, or it may require the selection of another subcontract source. This will depend, of course, on the particular reasons for denying consent.

5.0 REFERENCES

- DEAR 970.4402-2 Contractor Purchasing System
- FAR Part 44 - Subcontracting Policies and Procedures
- FAR 15.402
- FAR 15.404-4(c)(4)(i)
- FAR 44.202-2
- CH Directive 971
- FAR 52.244-2
- DEAR 971.1
- FAR 9.405-2

6.0 DEFINITIONS

OCC	Office of Counsel
IPC	Office of Intellectual and Patent Counsel
CHIRP	Chicago Operations Independent Review Panel
HQBCD	Headquarters Business Clearance Division
PEM	Project and Engineering Management Team
ES&H	Environment, Safety and Health Team

7.0 ATTACHMENTS

Enclosure 1- Contractor Procurement System Delegation Letter, dated
September 30, 2005

Enclosure 2- Contracting Officer Consent Letter

September 28, 2005

Professor Robert J. Goldston
Princeton Plasma Physics Laboratory
P.O. Box 451
Princeton, New Jersey 08543

Dear Professor Goldston:

SUBJECT: CONTRACTOR PURCHASING SYSTEM APPROVAL AUTHORITY
PRINCETON PLASMA PHYSICS LABORATORY (PPPL) CONTRACT
NO. DE-AC02-76CH03073 WITH PRINCETON UNIVERSITY

Prior DOE Contracting Officer approval is required for all subcontracts or purchase orders that are identified in or inconsistent with the requirements of Clause 1.114 and Appendix G. For further clarification, you are advised that all of the following require the Contracting Officer's approval:

1. Acquisition of Utility Services
2. Acquisition of Real Property.
3. Purchases of patents or patent license rights, including the payment of royalties and permits or license fees.
4. Acquisitions of software by negotiated lease or license.
5. Acquisitions which expressly recognize proprietary rights, including the recognition of technical data as trade secrets.
6. Acquisitions which impose restriction(s) of DOE's use of the supplies or data procured under a subcontract.
7. Actions that exceed \$1,000,000.00.
8. Any proposed modification of DOE-approved PPPL general provisions that require the waiver of a statutory or regulatory requirement.
9. Any proposed extension of a subcontract or purchase order more than one year beyond its initial performance period, including options.
10. All additions to, modifications or delegations of Laboratory Procurement policies and procedures prior to implementation, except for changes that are (1) strictly editorial in nature and do not affect approved policies or procedures; (2) occasioned by changes

initiated by regulatory agencies external to PPPL , where Government-wide compliance is required; or (3) occasioned by specific written direction provided by DOE-PSO. The
ENCLOSURE 1

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11. Contracting Officer will be given 48 hours' advance notice of any change made pursuant to the cited exceptions.
12. All promises to indemnify another party, except for Price-Anderson Nuclear Hazards Indemnity.
13. Acquisitions of foreign-made end products valued in excess of \$100,000 unless only foreign-made end products are offered.
14. Acquisitions of special items as defined in the DEAR 908.71 when the proposed method of acquisition differs from the DEAR method.

The approval of your Purchasing System:

1. shall automatically terminate when any addition, modification or delegations of Laboratory Procurement Policies and or Procedures change occurs in the system, unless such change has received my approval;
2. may be withdrawn at any time at my discretion; and
3. does not negate the requirement for advance notification and the content of such notification as set forth in DEAR 970.4401-3. Advance notification for information purposes is required in the following instances:
 - a. cost reimbursement type subcontracts of any award value;
 - b. fixed price-type subcontracts which exceed \$100,000; and
 - c. purchases from contractor-affiliated sources to include intra-university transfers or payments of \$10,000 or more.

The advance notice shall contain, at a minimum, a description of the work, estimated cost, type of contract or reimbursement provisions, and extent of competition, or justification for noncompetitive purchase procurement.

Per Clause 1.114 of Contract No. DE-AC02-76CH03073, DOE has approved your Purchasing System through September 30, 2006.

Sincerely,

Jerry Wm. Faul, Manager
Princeton Site Office
(Contracting Officer)

cc: R. Templon, PPPL

E. Winkler, PPPL
L. Sadler, BSO

ENCLOSURE 2

Date

Addressee

SUBJECT: CONTRACTING OFFICER CONSENT TO PROPOSED SUBCONTRACT
NO. _____ UNDER PRIME CONTRACT NO. _____

Consent is hereby given to the placement of the subject proposed subcontract or purchase order, subject to the clause contained in the prime contract and conditional upon the information furnished by the contractor in support thereof. This consent shall in no way relieve the prime contract of any obligations or responsibilities it may otherwise have under the contract or under law, shall neither create any obligation of the Government to, nor privity of contract with, the subcontractor or vendor, and shall be without prejudice to any right or claim of the Government under the prime contract. This consent does not constitute a determination as to the acceptability of the subcontract price or the allowability of costs.

Sincerely,

Raymond M. Kimble
Contracting Officer